



September 10, 1999

Mr. Mike S. Wenk
Criminal District Attorney
Hays County Justice Center
110 E. Martin Luther King
San Marcos, Texas 78666

OR99-2519

Dear Mr. Wenk:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127637.

Hays County (the "county") received a request for all complaints received by the Hays County Environmental Health Department regarding the requestor and another individual. The requestor also seeks copies of all responses to a specific questionnaire. You claim that any information tending to identify the complainants is excepted from disclosure under the informers' privilege as incorporated by section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the submitted information.

The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those

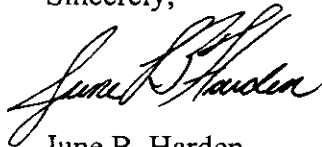
¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The purpose of the informer's privilege is to encourage the flow of information to the government by protecting the identity of the informant. Open Records Decision Nos. 582 (1990), 579 (1990), 549 (1990). The informer's privilege is waivable by a governmental body. Open Records Decision No. 549 (1990).

You explain that Mr. Doug Dowlearn is "being investigated by the Sanitarian/Code Enforcement Officers' Advisory Committee of the Texas Department of Health pursuant to a complaint filed by the Hays County Environmental Health Department (the 'department')." Furthermore, you explain that "[i]n an effort to gather information relating to Mr. Dowlearn's violation of the [Texas Natural Resources Conservation Commission's] rules, an employee with the [department] solicited information from customers of Mr. Dowlearn." After reviewing your arguments and the submitted information, we conclude the informers' privilege is applicable in this instance. Therefore, the county may withhold the complainants' names and the "Comments" section of the submitted questionnaires under the informers' privilege. We have also marked a document that must be withheld in its entirety to protect the complainant's identity. The "check-off" section of the questionnaires and the requestor's letter, however, must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 127637

Encl. Marked documents

cc: Mr. John Dickey
16009 Arbor Trail
Buda, Texas 78610
(w/o enclosures)